

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HENRY JAMES KOEHLER,  
Petitioner,

No. C 08-04874 CW (PR)

ORDER DISMISSING PETITION WITH  
LEAVE TO AMEND

v.

GREG MUNKS, Sheriff, San Mateo  
County, JERRY BROWN, Attorney  
General, California

Respondents.

On October 24, 2008, Petitioner Henry James Koehler, acting pro se, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 3, 2009, attorney Darryl Scott Cordle substituted in to represent Petitioner.

A district court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); see Rose v. Hodges, 423 U.S. 19, 21 (1975).

The petition indicates that Petitioner served a five-day sentence for contempt of court in the San Mateo County jail relating to a family law case in state court. After he served his sentence, Petitioner filed this petition. Therefore, Petitioner

1 may not have been in custody on the day he filed this petition. If  
2 that is the case, this Court may lack jurisdiction over his  
3 petition. See Maleng v. Cook, 490 U.S. 488, 490-91 (1989) (habeas  
4 petitioner must be in custody under the conviction or sentence  
5 under attack at time petition is filed); also see Henry v. Lungren,  
6 164 F.3d 1240, 1241 (9th Cir. 1999) (habeas petition did not relate  
7 back to previous petition that had been dismissed).

8 Therefore, the petition is dismissed with leave to amend.  
9 Petitioner, through counsel, may file an amended petition no later  
10 than twenty days from the date of this order which includes facts  
11 and law demonstrating that jurisdiction in this Court is proper.

12  
13 IT IS SO ORDERED.

14 Dated: 6/30/09



CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

HENRY JAMES KOEHLER,

Plaintiff,

v.

GREG MUNKS et al,

Defendant.

Case Number: CV08-04874 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 30, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Darryl Scott Cordle  
69-730 Highway 111  
Suite 209B  
Rancho Mirage, CA 92270

Dated: June 30, 2009

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk

United States District Court  
For the Northern District of California